

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAZARO GUERRA)	
Claimant)	
)	
VS.)	
)	
DOERR METAL PRODUCTS, INC.)	
Respondent)	Docket No. 1,031,072
)	
AND)	
)	
CINCINNATI INDEMNITY CO.)	
Insurance Carrier)	

ORDER

Claimant requests review of the December 26, 2006 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

At the December 6, 2006 preliminary hearing, the sole issue was whether claimant was entitled to temporary total disability compensation. The Administrative Law Judge (ALJ) denied claimant's request.

The claimant requests review of whether the ALJ erred in denying his request for temporary total disability compensation.

Respondent argues the Board does not have jurisdiction to review this appeal and therefore the claimant's application for review should be dismissed. In the alternative, the respondent further argues claimant did not meet his burden of proof to establish that he is entitled to temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

At the December 6, 2006, preliminary hearing the respondent admitted, for preliminary hearing purposes, that claimant had suffered a compensable work-related injury. It was further noted that claimant had been provided medical treatment and

temporary total disability compensation for specified time periods after surgeries to each shoulder. The sole issue raised at the preliminary hearing was whether claimant was entitled to temporary total disability compensation.

Initially, the respondent argues the claimant's appeal does not raise a jurisdictional issue for an appeal from a preliminary hearing. This Board Member agrees.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. K.S.A. 44-534a(a)(2) restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.¹

Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.²

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Moreover, K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation. The issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the

¹ See K.S.A. 44-551.

² See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683, P.2d 902 (1984).

jurisdiction to determine at a preliminary hearing. Therefore, the ALJ did not exceed his jurisdiction.

Accordingly, the Board does not have jurisdiction to address this issue at this juncture of the proceedings. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.³ Accordingly, claimant's appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding of this Board Member that the claimant's application for review should be dismissed and Administrative Law Judge Bruce E. Moore's Order dated December 26, 2006, shall remain in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of February, 2007.

BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant
D. Steven Marsh, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge

³ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2005 Supp. 44-555c(k).